

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:17CV255

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filings 48 & 50) filed by Petitioner on February 16, 2022, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal (filing 49). Petitioner seeks to appeal the court's Memorandum and Order (filing 21) and Judgment (filing 22) entered on March 1, 2018, dismissing Petitioner's habeas petition without prejudice for failure to amend his petition as ordered by the court, and the Judgment (filing 46) and Mandate (filing 47) issued by the Eighth Circuit Court of Appeals on January 28, 2022, denying Petitioner's motion for authorization to file a successive habeas application.

This is the third appeal Petitioner has filed in this case. Petitioner's first appeal of the court's March 1, 2018 judgment was dismissed by the Eighth Circuit Court of Appeals for lack of jurisdiction on June 6, 2018. (*See* Filing 31.) Petitioner then filed a second frivolous appeal on November 20, 2018, in which he again sought to challenge the March 1, 2018 dismissal of his habeas petition. (Filing 34.) That appeal was likewise unsuccessful. (*See* Filing 43.) Now, Petitioner is back and trying to challenge this court's judgment again as well as the Eighth Circuit's denial of his motion for authorization to file a successive habeas application.

Petitioner's appeal is clearly frivolous and not taken in good faith because (1) he has already prosecuted an appeal of this court's judgment dismissing his habeas petition, (2) this matter has been closed for almost four years and his appeal is grossly untimely, and (3) the Eighth Circuit Court of Appeals' denial of his motion for authorization to file a successive habeas application is not appealable. *See* 28 U.S.C. § 2244(3)(E). Thus, Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 25th day of February, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge